RECENT IMPORTANT DECISIONS.

BANKS AND BANKING—AUTHORITY OF CASHIER—WHEN KNOWLEDGE OF CASHIER IS NOT IMPUTED TO BANK.—Plaintiff's cashier induced defendant to sign a note, gratuitously, and deliver it to the bank, to be substituted for notes of the cashier, explaining to the defendant that it would not look well to the bank examiner for the bank to have its cashier's paper, and promising defendant that he would never be called upon to pay the note. A statute makes it a penal offense knowingly to make false entries in the books of a bank or knowingly to subscribe or exhibit false papers with intent to deceive the State bank examiner. *Held*, first, that the cashier had no authority to make defendant the promise he did; and, second, that defendant was charged with knowledge that the cashier's purpose was to violate the statute, but that the bank was not charged with the cashier's knowledge that defendant received nothing for the note. *State Bank of Moore* v. *Forsyth* (1910), — Mont. —, 108 Pac. 914.

The promise of the cashier that defendant would never be called upon to pay the note was altogether inoperative and void as an undertaking of the bank, and defendant acted upon it at his peril. 1 MORSE, BANKS & BANKING, Ed. 4, § 167; *Davis* v. *Randall*, 115 Mass. 547; *First Nat. Bank* v. *Tisdale*, 84 N. Y. 655. "A cashier is especially forbidden from releasing a debtor," 1 BOLLES, MOD. LAW OF BANKING, 361; *Hodge* v. *Bank*, 22 Grat. 51; *Sav. Assn.* v. *Sailor*, 63 Mo. 24; *Bank of U. S.* v. *Dunn*, 6 Pet. 51. Defendant was charged with notice of the statute—Rev. Codes, 4001—that the cashier was violating. Defendant could not, in connivance with the cashier, give the bank semblance of solidity and security, and then, when sued upon the note, escape the consequences of his fraudulent act. *Pauly* v. *O'Brien*, 69 Fed. 460. But the cashier's knowledge that defendant received nothing for the note could not be imputed to the bank. The ordinary rule of imputation of an agent's knowledge to his principal does not apply when the agent is acting adversely to his principal. *Bank of Ionia* v. *Montgomery*, 126 Mich. 327, 85 N. W. 879; *Graham* v. *Bank*, 59 N. J. L. 225, 35 Atl. 1053; *Fort Dearborn Bank* v. *Seymour*, 71 Minn. 81, 73 N. W. 724; *Dooley* v. *Hadden*, 179 U. S. 646, 45 L. Ed. 357. Nor if the conduct of the agent raises a clear presumption that he would not communicate the fact in controversy, as when to do so would necessarily prevent the consummation of a fraudulent scheme the agent was engaged in perpetrating. *Findley* v. *Cowles*, 93 Iowa 389, 61 N. W. 998; *Innerarity* v. *Bank*, 139 Mass. 332, 1 N. E. 282, 52 Am. Rep. 710; *Camden, etc.* v. *Lord*, 67 N. J. Eq. 489, 58 Atl. 607.

BILLS AND NOTES—TITLE TO PERSONALTY RETAINED AS COLLATERAL SECURITY—RIGHT OF TRANSFEREE.—A company sold goods under a contract, retaining title until payment of the price. Purchase money notes were given and, subsequently, were transferred to a purchaser for value, without transfer of the contract. The transferee was ignorant of the existence of the

contract, and filed a claim against the maker's receivers, stating that he had no security. *Held,* that the transfer of the notes carried with it the contract in so far as it reserved title to the goods, as collateral security for payment of the notes; and that the transferee was not estopped from asserting his lien by his claim to the contrary made when he was ignorant thereof. *Gay* v. *Hudson River Electric Power Co., In re Quinn* (1910), —C. C., N. D., N. Y. —, 180 Fed. 222.

The judge, in deciding, said: "The question is not free from doubt." He cited, as holding contrary, *Domestic Sewing Machine Co.* v. *Arthurhultz,* 63 Ind. 322. That case was followed in *Hyde* v. *Courtwright,* 14 Ind. App. 106, and distinguished, in *Heyms* v. *Meyer* (1910), — Ind. App. —, 91 N. E. 973, from the case where both the note and the contract are assigned. *Bank* v. *Thomas,* 69 Tex. 237, 6 S. W. 565, is also contrary to this decision. The great weight of authority, however, holds that the retention of title in the vendor is but as collateral security for the purchase price, and that a transfer of the debt, therefore, carries with it, as an incident, the interest in the chattel, in the same manner as the assignment of a mortgage debt would carry with it the mortgage. *Cutting* v. *Whittemore,* 72 N. H. 107, 54 Atl. 1098; *Duke* v. *Shackleford,* 56 Miss. 552; *Spoon* v. *Frambach,* 83 Minn. 301, 86 N. W. 106; *Standard Steam Laundry* v. *Dole,* 22 Utah 311, 61 Pac. 1103. Georgia cases support the present opinion, but they are based upon a statute. *Cade* v. *Jenkins,* 88 Ga. 791, 15 S. E. 292; Georgia Acts of 1887, p. 62. In Georgia, if the indorsement of the note is without recourse and unaccompanied by an express transfer, to the indorsee, of the title to the chattel, such title, thereupon, vests absolutely in the maker of the note. *Townsend* v. *Southern Product Co.,* 127 Ga. 342, 56 S. E. 436; *Swann Davis Co.* v. *Stanton,* 7 Ga. App. 668, 67 S. E. 888. According to the cases cited above, showing the weight of authority, the subsequent assignment of the collateral contract to the transferee of the note, which was done in the present case, was unnecessary. Nor does the transferee have to know of or rely upon the collateral security. *Kimball Co.* v. *Mellon,* 80 Wis. 133, 48 N. W. 1100. In fact, in the present case, the transferee thought he had no security, and filed a claim so stating; still the court held him not estopped from asserting his lien.

BOUNDARIES—FENCES—EJECTMENT — CHAMPERTY. — Plaintiff in ejectment charges that defendant fenced off twenty feet of plaintiff's land, plaintiff claiming under a deed dated five years after fence was built. Deed called for the fence as a boundary. *Held,* by the deed plaintiff took no title to the land beyond the fence. The disputed strip belongs either to defendant or to plaintiff's vendors, and to recover in ejectment plaintiff must rely upon the strength of his own title, and not upon the weakness of his adversary's. The deed to plaintiff would be champertous as to all land within the fence. *Tool* v. *Kinman* (1910), — Ky. —, 130 S. W. 1073.

At the time of conveyance to plaintiff, the disputed strip was in the adverse possession of the defendant. From an early date the policy of the law has not admitted of the conveyance by anyone of a title of land which